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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 589. ~~352~~ 32

PULLMAN'S PALACE CAR COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED SEPTEMBER 12, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Assignments of Errors.*

In the Supreme Court of the United States. October Term, 1885.

PULLMAN'S PALACE CAR COMPANY
vs.
COMMONWEALTH OF PENNSYLVANIA. } No. —.

Surwrit of error by Pullman's Palace Car Company to the supreme court of Pennsylvania.

1. The learned court erred in affirming the judgment of the court of common pleas of Dauphin county in favor of the Commonwealth of Pennsylvania and against Pullman's Palace Car Company.

2. The learned court erred in not reversing the judgment of the court of common pleas of Dauphin county.

3. The learned court erred in not sustaining the company's exception to the following ruling of the court below:

"We hold that the gross receipts of defendant accruing from business done in Pennsylvania are legally taxable here, although they may have gone into its general treasury in Chicago before
2 the tax became due, and that such taxation is not forbidden by the Constitution of the United States."

4. The court erred in not deciding that the taxation by the State of Pennsylvania of property owned in Illinois by a corporation of Illinois is in violation of a necessary implication of the Constitution of the United States that each State shall have jurisdiction only over property within its territorial limits.

5. The court erred in not sustaining the company's exception to the following ruling of the court below:

"We decide that the act of June 7, 1879, does impose a tax upon the receipts of the Pullman Palace Car Company, and in doing so does not violate clause 4, section 8, of article I of the Constitution of the United States."

6. The court erred in not holding that the taxation by the State of Pennsylvania of receipts which were the personal property of a corporation of the State of Illinois in its treasury in the city of Chicago, mingled with its other receipts and personal property in said city, because the said receipts were derived from the
2½ transportation of passengers from or to other States, into, out of, or through the State of Pennsylvania, is in violation of that provision of the Constitution of the United States which vests in Congress the power to regulate commerce among the several States.

To the honorable the judges of the Supreme Court of the United States of America:

The petitioner prays for a reversal of the judgment entered against it in the supreme court of Pennsylvania for the reasons assigned above.

PULLMAN'S PALACE CAR COMPANY,
By its attorney, M. E. OLMSTED.

[Endorsed:] 36. Pullman's Palace Car Co. *vs.* Commonwealth of Pennsylvania. Assignments of errors and prayer for reversal. Olmsted.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Pullman's Palace Car Company, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause

4 of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twelfth day of November, in the year of our Lord. one thousand eight hundred and eighty-four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOSEPH P. BRADLEY,
Asso. Justice, Sup. C't U. S.

[Endorsed:] Original. No. 36. Pullman's Palace Car Company *vs.* Commonwealth of Pennsylvania. Writ of error. Filed Dec. 5th, 1881.

5 The United States of America to the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the office of the prothonotary of the supreme court of Pennsylvania for the middle district, wherein Pullman's Palace Car Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this twelfth day of November, in the year of our Lord one thousand eight hundred and and eighty-four.

JOSEPH P. BRADLEY,
Associate Justice Supreme Court of the United States.

6 STATE OF PENNSYLVANIA, *ss:*

On this fifth day of December, in the year of our Lord one thousand eight hundred and eighty-four, personally appeared A. C. Stamm before me, the subscriber, prothonotary of the supreme court of Pennsylvania for the middle district thereof, and makes oath that he delivered a true copy of the within citation to Robert E. Pattison, Governor of the Commonwealth of Pennsylvania, and also delivered a true copy of the same to Lewis C. Cassidy, attorney general of the Commonwealth of Pennsylvania.

A. C. STAMM.

Sworn and subscribed before me the day and year aforesaid.
WILLIAM PEARSON,
Prothonotary.

[Endorsed:] No. 36. May term, 1883. Pullman's Palace Car Company *vs.* Commonwealth of Pennsylvania. Citation. Filed Dec. 5th, 1884.

7 The answer of the justices of the supreme court of the State of Pennsylvania to the writ of error from the Supreme Court of the United States, hereunto annexed, as follows, to wit:

(*Appearance. Docket Entry.*)

April Term, A. D. 1883.

Among the records of the court of common pleas of Dauphin county, Penna., to number 323, April term, A. D. 1883, it is contained as follows, to wit:

Appeal from the Settlement of the Auditor General & State Treasurer.

COMMONWEALTH OF PENNSYLVANIA
vs.
PULLMAN PALACE CAR CO. } 323.

Cassiday, Olmsted.

March 20th, 1883.—Appeal and specification of objections filed.

April 13, 1883.—Narr. and copy of account filed.

April 15, 1883.—Agreement to try without jury and without further pleadings filed.

8 May 16, 1883.—Opinion and finding of the court filed deciding that there is due the Commonwealth by the defendant the sum of one thousand four hundred and sixty-four & $\frac{92}{100}$ dollars ($1,464.92), exit notice.

May 24, 1883.—Exceptions filed.

Same day exceptions overruled and judgment entered on the finding of the court.

May 24, 1883.—Writ of error from the Supreme Court received and filed.

Certified:

[Seal of the Court of Common Pleas of Dauphin County.]

E. B. MITCHELL,
Prothonotary.

(*Appeal and Specification of Objections.*)

Pullman Palace Car Co. in account with Commonwealth of Pennsylvania. DR.

For tax on gross receipts per act of June 7th, 1879, for six months ending Dec. 31st, 1882, as per reports herewith filed:

9 Gross receipts, $174,396$\frac{35}{100}$.

Tax at rate of eight-tenths of one per cent. --- $1,395 17

Due Commonwealth ---------- $1,395 17

(Interest at 12 per centum 60 days after date of settlement.)

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *March 6th*, 1883.

Settled & entered.

ROB'T S. FRAZIER,
For JOHN A. LEMON,
Auditor General.

TREASURY DEPARTMENT, PA.,
HARRISBURG, *March 15th*, 1883.

Approved:

W. LIVSEY,
For L. M. BAILEY,
State Treasurer.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *March 15th*, 1883.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and seal of office the day and year aforesaid.

THOMAS M. COMANT
For JOHN A. LEMON,
Auditor General.

In the matter of the account for tax on gross receipts per act of June 7th, 1879, for six months ending Dec. 31st, 1882, settled
10 against Pullman Palace Car Company by the auditor general March 6, 1883, and approved by the State treasurer March 15th, 1883.

The said Pullman Palace Car Company hereby appeals from said settlement to the court of common pleas of Dauphin county, and, together with a copy of said account, files the following specifications of objections thereto, agreeably to the provisions of the act of Assembly in such case made and provided:

The said settlement is erroneous and illegal, because—

1. *Because* the act of June 7th, 1879, taxes only receipts derived from "tolls and transportation, telegraph business or express business," and, as stated in the report upon which the account hereby appealed from purports to be based, no part of the receipts upon which the tax is charged was derived from such sources. Pullman's Palace Car Company has no authority to engage in
11 the business of transportation, and has never in any way, either directly or indirectly, engaged in the business of transportation of either freight or passengers, nor derived any receipts whatever from such business.

2. Pullman's Palace Car Company is a corporation of the State of Illinois. At the time when the tax claimed is alleged to have accrued or became due, and also at the time of the settlement of the account by the auditor general, the receipts upon which the tax is charged were the personal property of said company, at Chicago, Illinois, mingled with other receipts and personal property, and were not subject to taxation by the State of Pennsylvania.

3. The taxation by the State of Pennsylvania of property owned in Illinois by a corporation of Illinois is in violation of a necessary implication of the Constitution of the United States—that
12 each State shall have jurisdiction only over property within its territorial limits.

4. If the act of June 7, 1879, imposes a tax upon the receipts of Pullman's Palace Car Company then the said act is in violation of clause 4, section 8, of article I of the Constitution of the United States, and therefore is void.

PULLMAN'S PALACE CAR COMPANY,
By its attorney, M. E. OLMSTED.

(Endorsement:) 323. April term, 1883. Commonwealth of Pennsylvania *v.* Pullman's Palace Car Company. Appeal and specifica-

tions of objections. Filed March 20, 1883. Auditor general's department. Filed March 17, 1883. Commonwealth of Pennsylvania. R. L. Frazier for John A. Lemon, auditor general. Olmsted.

13 *Agreement to Try without a Jury and without Further Pleadings.*

In the Court of Common Pleas of Dauphin County. Ap'l T., 1883.

COMMONWEALTH OF PENNSYLVANIA
v.
PULLMAN PALACE CAR COMPANY. } No. 323.

Gross receipts.

It is hereby agreed that a trial by jury be dispensed with in the above-stated case, and that the same be submitted to the decision of the court, to be heard and determined under the provisions of an act entitled "An act to provide for the submission of civil cases to decision of the court, and to dispense with trial by jury," approved the 22nd day of April, 1874, without further pleadings, subject, however, to a writ of error as in other cases, at the option of either party.

March, 1883.

ROBERT SNODGRASS,
Dep'ty Att'y Gen'l.
M. E. OLMSTED.

(Endorsement:) 323. April term, 1883. Commonwealth
14 of Pennsylvania *v.* Pullman Palace Car Company. Agreement to try without jury and without further pleadings. Filed April 15, 1883.

(*Narr. and Copy of Account.*)

In Dauphin — Common Pleas.

DAUPHIN COUNTY, *ss:*

The Commonwealth of —, by her attorney general, complains of the Pullman Palace Car Company of a plea that they render unto the said Commonwealth the sum of one hundred thousand dollars, lawful money of the United States, which they owe to and unjustly detain from her.

For that whereas the said defendants, on the 6th day of March, A. D. 1883, at the county of Dauphin aforesaid, were indebted to the said plaintiff in the sum of one thousand three hundred and ninety-five & $\frac{17}{100}$ dollars, lawful money of the United States, on an
15 account examined, adjusted, settled, and signed by the auditor general of this Commonwealth, and duly entered in the books of his office, as authorized and required by law, on the day and year last aforesaid, in which a certain sum of money, to wit, the sum last aforesaid, is due and owing the said plaintiff from the said defendant, with interest thereon at the rate of twelve per centum per annum from and after the expiration of two months from the

day upon which the said account was so as aforesaid examined, adjusted, settled, and signed by the auditor general of this Commonwealth, for tax on gross receipts, as per act of June 7th, 1879, for the six months ending Dec. 31, 1882, which said account was, on the 15th day of March, A. D. 1883, submitted to, revised, and approved by the State treasurer and a copy thereof, within thirty days thereafter, sent by the said auditor general, under his hand and seal of office, to the said de-
16 fendants, and which yet remains in full force against the said defendants, whereby and by force of the statute in such case made and provided an action hath accrued to the said plaintiff to demand and have of and from the said defendants a certain sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account so as aforesaid examined, adjusted, settled, and signed by the auditor general of this Commonwealth, parcel of the said sum above demanded. And being so indebted, the said defendants afterwards, to wit, on the day and year aforesaid, at the county aforesaid, promised to pay to the said plaintiff on request the last-mentioned sum of money.

And whereas, also, the said defendants, on the day and year in the first count mentioned, at the county aforesaid, were in-
17 debted to the said plaintiff in a certain further sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account in the first count mentioned, for money then and there had and received by the said defendants to and for the use of the said plaintiff; and also a certain further sum of money, to wit, the sum last aforesaid, on an account settled and entered by the auditor general of this Commonwealth against the said defendants, on the day and year in the first count mentioned, for tax on gross receipts, and approved by the State treasurer, on the day and year in the first count mentioned.

And whereas afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, the said defendants, in consideration of the premises, promised to pay the two last-mentioned several sums of money, respectively, to the said plaintiff on request,
18 yet the said defendants have disregarded their said promises, and, although often requested so to do, have not as yet paid any of the said several sums of money or any part thereof, to the damage of said plaintiff of one hundred thousand dollars; and therefore she brings suit, &c.

ROB'T SNODGRASS,
Deputy Att'y Gen'l.

For LEWIS C. CASSIDY,
Attorney General.

(*Copy of Account.*)

Pullman Palace Car Company in account with the Commonwealth of Pennsylvania. DR.

For tax on gross receipts per act of June 7th, 1879, for six months ending Dec. 31, 1882, as per reports herewith filed:	
Gross receipts	$174,396 35
Tax at rate of eight-tenths of one per cent.	1,395 17
Due Commonwealth	1,395 17

Interest at 12 per centum per annum from 60 days after date of settlement.

19 AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *March 6th*, 1883.

Settled and entered.

ROB'T S. FRAZIER,
Per JOHN A. LEMON,
Auditor General.

TREASURY DEPARTMENT OF PA.,
HARRISBURG, *March* 15, 1883.

Approved:

W. LIVSEY,
For S. M. BAILEY,
State Treasurer.

(Endorsement:) 323. April term, 1883. Commonwealth of Pennsylvania *v.* Pullman's Palace Car Company. Narr. and copy of account. Filed April 13, 1883.

(*Opinion of Court of Common Pleas.*)

In Dauphin County — Common Pleas. April Term, 1883.

COMMONWEALTH
v.
PULLMAN PALACE CAR COMPANY. } 322.

Appeal.

By the COURT:

This case was tried by the court without a jury, as provided by the act of April 22, 1883.

It is an appeal by the defendant from an account settled against it by the auditor general and State treasurer, dated March
20 15, 1883, for tax on gross receipts, under section 7 of the act of June 7, 1879 (P. L., 112), for the half year ending Dec. 31, 1882.

The facts are these:

Defendant is an Illinois corporation, with its principal office in Chicago. It has authority by its charter "to manufacture, construct,

and purchase railway cars, with all convenient appen-ages and supplies for persons travelling thereon, and the same may sell or use, or permit to be used, in such manner and upon such terms as the said company may think fit and proper."

During all the period for which tax is charged in this case it had and still has contracts to furnish, and did and does furnish, to many railroad companies in this and other States sleeping and parlor cars to be run upon the roads of said companies on the following terms:

21 The cars furnished by defendant are attached to and make part of the trains upon said railroads, no charge being made by either party against the other. The railroad companies sell the usual tickets, or collect the usual fare from passengers, which entitles them to travel on the train, but does not give them the right to be transported in the defendant's cars. For this right an additional sum is paid to the defendant, which entitles the passenger to be transported in the cars of defendant and to the use of the sitting and sleeping accommodations with which they are furnished while being so transported.

Most of these cars run and carry their passengers from some other State into Pennsylvania or from the latter into some other State, and many of them run continuously through this State.

22 The cars used or furnished by the defendant to railroads in Pennsylvania were leased by it from a corporation of this State, known as the Central Transportation Company, to which defendant paid an annual rental during the period for which tax is charged in this case, which exceeded the amount of the gross receipts accruing to it for business done in this State. Said Central Transportation Company has regularly paid all taxes claimed from it by the State.

The gross receipts upon which tax is charged in the settlements appealed from accrued from the business carried on by defendant in this State in the manner above stated, a large proportion thereof having been received from passengers carried into, out of, or through the State. These receipts went into the general treasury of the company.

Defendant, on these facts, denies all liability for tax upon gross receipts in this State—

23 First. Because the act of June 7, 1879, under which the tax is charged, taxes only receipts derived from "tolls and transportation, telegraph and express business," and defendant claims "that no part of the receipts upon which tax is charged was derived from such sources."

This raises the question whether the receipts of defendant, derived from its business conducted as above stated, were, within the intent and meaning of the said act, paid to it for "transportation," it not being pretended by any one that they were paid either for tolls, telegraph, or express business.

A careful examination of section 7 of the act will show that its scope extends beyond companies engaged directly in the business of "transporting freight or passengers." It imposes the tax upon every company * * * leasing to it from another corporation,

company, or limited partnership any * * * device for the transportation of freight or passengers; it includes "any
24 palace car and sleeping car company," and it provides that "where the works of one corporation, company, or limited partnership are leased to and operated by another corporation, company, or limited partnership" they shall adjust the taxes between them, but the Commonwealth shall first look to the corporation, company, or limited partnership operating the works;" and if the tax is paid by them the lessor company "shall not be held liable under this section for any tax upon the proportion of said receipts received by it or rental for the use of said works."

It appears, therefore, from the express language of the acts, that any company leasing to another "any device for the transportation of freight or passengers" is liable to the tax, and that the rental received is understood by the act itself to be received for transportation.

But, apart from the interpretation which the scope of the
25 act requires to be put upon the terms "for transportation," let us endeavor to ascertain what is the precise nature of the business in which defendant is engaged as shown by the facts found. It is owner or lessee of the cars, for, — the consideration of the receipt of the ordinary fare from those who use them, the railroad companies agree to furnish the motive power to draw them; and for the consideration of the use of this motive power the defendant agrees that the railroad companies may receive the ordinary fare, but the payment of this does not entitle the passenger to be transported in defendant's cars, nor do the railroad companies undertake so to transport him. For this privilege he must pay an additional price to the defendant, and, if this did not entitle him to be so transported, he would never pay it. The main purpose of the pas-
26 senger in taking his seat or his sleeping berth in defendant's car is to be transported. The sitting on one of their chairs, more comfortable, perhaps, than a seat in the first-class railroad car, or lying in one of their berths, is a mere incident. The passenger is influenced by precisely the same motives and feelings as he is who pays full fare and travels in a first-class car instead of taking second class at a reduced rate. In either case the price paid is primarily for transportation, the only difference being that in one case a larger price is paid for better accom-odations by the way. If the railroad companies owned the palace and sleeping cars and charged those passengers who chose to travel in them a higher rate of fare than those paid who travelled in their other cars, no one would think of claiming that the sum realized from the difference of rate
27 was not received for "transportation." But that the transaction is divided between the two cannot change its essential character.

We hold, therefore, that both by the terms of the act of June 7, 1879, and from the nature of the business transacted by defendant in this State, the gross receipts reported by it were received "for transportation," and are taxable and properly taxed in the settlement appealed from in this case. We do not intend to decide any-

thing as to the receipts for meals furnished to passengers "en route." There is nothing in the case to show that there are any such included in the sum taxed, and if there be defendant has not shown that fact, and it is not therefore in the case.

Second. Defendant contends that these gross receipts are
28 not taxable in this State because it is an Illinois corporation, and at the time the tax was claimed and the settlement was made these receipts were the personal property of the company at Chicago, mingled with its other property, and that the taxation of property owned in Illinois by a corporation of that State is forbidden by the Constitution of the United States.

We are not aware that there is any provision in the Constitution of the United States which forbids the taxation of personal property without the jurisdiction of the State, if its owner be within the jurisdiction. The State must have jurisdiction of the property or the person, but not necessarily of both. Here the defendant, doing business within the State, is within its jurisdiction, and its right and power to tax the property acquired here cannot be defeated by removing the property beyond its borders.

We hold that the gross receipts of defendant accruing from
29 business done in Pennsylvania are legally taxable here, although they may have gone into its general treasury in Chicago before the tax became due, and that such taxation is not forbidden by the Constitution of the United States.

Third. Defendant contends, and in doing so, as we understand it, merely makes the second objection, which, we think, is involved in this, more specific, that "if the act of June 7, 1879, imposes a tax upon receipts of defendant said act is in violation of clause four, section eight, article one of the Constitution of the United States, and therefore void."

This objection cannot be sustained. The point has been settled, for the present at least, by the case of the State tax on railway gross receipts, 15 Wallace, 284. There was a strong dissenting opinion by Mr. Justice Miller, concurred in by two other judges, in that case; but until it is, if ever, overruled we are bound by it,
30 and so long as the court which decided it does not restrict it to the case of a corporation chartered by the State imposing the tax, we shall not undertake to do so.

We decide that the act of June 7, 1879, does impose a tax upon the receipts of the Pullman Palace Car Company, and in so doing does not violate clause four, section eight, of article one of the Constitution of the United States.

Upon the whole case defendant is liable to the tax charged in the settlement, the amount of which is as follows:

Amount of settlement, dated March 15, 1883	$1,395 17
Attorney general's commission	69 75
Total	$1,464 92

For which sum let judgment be entered in favor of Common-

wealth and against defendant, unless exceptions be filed according to law.

J. W. SIMONTON, *P. J.*

31 (Endorsement:) 323. April term, 1883. Commonwealth *v.* Pullman Palace Car Company. Opinion. Filed May 16, 1883.

(*Defendant's Exce-tions.*)

In Dauphin County — Common Pleas. April Term, 1883.

COMMONWEALTH OF PENNSYLVANIA
v.
PULLMAN'S PALACE CAR COMPANY. } 323.

HARRISBURG, PA., *May* 21, 1883.

This case having been heard under the act of April 22, 1874, without the intervention of a jury, defendant files the following exceptions to the finding of the court:

First. The court erred in deciding as follows:

"We hold, therefore, that both by the terms of the act of June 7, 1879, and from the nature of the business transacted by defendant in this State, the gross receipts reported by it were received
32 'for transportion,' and are taxable and properly taxed in the settlement appealed from in this case."

Second. The court erred in deciding as follows:

"We hold that the gross receipts of defendant, accruing from business done in Pennsylvania, are legally taxable here, although they may have gone into the general treasury in Chicago before the tax became due, and that such taxation is not forbidden by the Constitution of the United States."

Third. The court erred in deciding as follows:

"We decide that the act of June 7, 1879, does impose a tax upon the receipts of the Pullman Palace Car Company, and in doing so does not violate clause four, section eight, of article one of the Constitution of the United States."

Fourth. The court erred in directing judgment to be en-
33 tered in favor of the Commonwealth for $1,464.92.

Fifth. The court erred in not directing judgment to be entered for the defendant.

M. E. OLMSTED,
Attorney for Defendant.

May 23, 1883.—The foregoing exceptions overruled, and judgment is directed to be entered as in opinion filed.

J. W. SIMONTON, *P. J.*

(Endorsement:) 323. April term, 1883. Commonwealth of Pennsylvania *vs.* Pullman's Palace Car Company. Defendant's exceptions to the decision of the court. Filed May 24, 1883.

(*Writ of Error.*)

MIDDLE DISTRICT OF PENNSYLVANIA, *sct:*

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

34 Because in the record and process and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court, by our writ, between the Pullman Palace Car Company, plaintiff in error, and the Commonwealth of Pennsylvania, defendant in error, as it is said, manifest error hath intervened, to the great damage of the said plaintiff in error, as by complaint of the same plaintiff in error we have received information, we, — willing that if any error be therein it should be corrected and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Harrisburg, in and for the middle district of said Commonwealth, on the 21 Monday following 1 Monday of January, A. D. 1883,
35 being the first Monday of the term, and this writ, that, the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Honorable Ulysses Mercer, doctor of laws, chief justice of our supreme court, at Harrisburg, the 23rd day of May, in the year of our Lord one thousand eight hundred and eighty-three, and of the Commonwealth the one hundred and seventh.

[Seal of the Supreme Court of Pennsylvania, Middle District.]

WILLIAM PEARSON,
Prothonotary.

I certify that recognizance in error in $100 with A. C. Stamm as bail has been filed in the supreme court.

WILLIAM PEARSON,
Prothonotary.

The record and process and all things touching the same, so
36 full and entire as before us they remain, to the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the middle district, we certify and send as within we are commanded.

J. W. SIMONTON, *P. J.* [L. S.]

(Endorsement:) No. 36. May term, 1883. Supreme court, middle district. Pullman Palace Car Company, plaintiff in error, *v.* Commonwealth of Pennsylvania, defendant in error. Writ of error to the court of common pleas for the county of Dauphin. No. 323. April term, 1883. Returnable the 21 Monday following 1 Monday of January, 1883. Rule on the defendant in error to appear and plead

on the return day of the writ. N. B.—12 days' notice to the parties or counsel below is necessary to compel an appearance. Filed in Dauphin county C. P. March 24, 1883. Filed in supreme
37 court May 31, 1884.

MAY 24, 1883.

Service of the within writ accepted.

ROB'T SNODGRASS,
Dep't'y Att'y Gen'l.

In the Supreme Court of Pennsylvania, Sitting in and for the Middle District of said Court, *ss.*

At a supreme court of the State of Pennsylvania in and for the middle district of said court, at the city of Harrisburg, Pennsylvania, on the 21 Monday following 1 Monday of January, A. D. 1883—present, the Honorable George Sharswood, LL.D., chief justice, and Ulysses Mercer, Isaac G. Gordon, Edward M. Paxson, John Trunkey, and James P. Sterret, justices, and William Pearson, prothonotary of said court.

Among the records of the said the supreme court of Pennsylvania in and for the middle district, to May term, 1883, No. 36, it is contained as follows, to wit:

38 *Writ of Error to the Court of Common Pleas of Dauphin County, Penna., to No. 323, April Term, 1883.*

PULLMAN PALACE CAR CO., Defendant below and Plaintiff in Error,
v.
COMMONWEALTH OF PENNSYLVANIA, Plaintiff below and Defendant in Error. } 36.

Docket entries.

1883, May 23.—*Præc.*, aff., & recog. filed; *eo die*, exit writ of error r't'ble 21 Mon. following 1 Mon. of January, 1883.

1883, May 28.—Continued.

1884, May 31.—Record returned and filed.

1884, June 2.—Assignments of error filed.

" " 6.—Argued.

" Oct. 6.—Judgment affirmed *per curiam.*

1884, Dec. 6.—Writ of error from the Supreme Court of the United States received and filed.

Eo die.—Petition for *allocatur* of writ from said court. *Al-*
39 *locatur* of said writ by Honorable Joseph P. Bradley, justice of said court; citation from said Honorable Joseph P. Bradley and affidavit of service thereof on the Governor and attorney general of the Commonwealth of Pennsylvania, and writ of error bond in the sum of $3,000 received and filed; certified from the record.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary.

Præcipe, Affidavit, and Recognizance for Writ of Error.

40 In the Supreme Court of Pennsylvania for the Middle District.

PULLMAN'S PALACE CAR COMPANY, Defendant below, Plaintiff in Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Plaintiff below, Defendant in Error.

Issue writ of error to the court of common pleas of Dauphin county to remove the record and proceedings in a certain action of debt depending therein to No. 323 of April term, 1883. Returnable to May term, 1883.

M. E. OLMSTED,
Attorney for Plaintiff in Error.

To William Pearson, proth'y supreme court of Pa., middle district.

DAUPHIN COUNTY, *ss:*

M. E. Olmsted, attorney for the above-named plaintiff in error, being duly sworn according to law, deposes and says that the writ of error in this case is not intended for delay.

M. E. OLMSTED.

Sworn & subscribed before me this 23 day of May, 1883.

WILLIAM PEARSON,
Prothonotary.

41 *Surwrit of Error to the Court of Common Pleas for the County of Dauphin, of April Term,* 1883.

DAUPHIN COUNTY, *ss:*

In the Supreme Court of Penna. for the Middle District.

PULLMAN PALACE CAR COMPANY, Plaintiff in Error,
vs.
COMMONWEALTH OF PENNSYLVANIA, Defendant in Error. } No. 323.

We, the Pullman Palace Car Company and A. C. Stamm, severally acknowledge to owe the above-named defendant in error the sum of one hundred dollars, upon condition that the above-named plaintiff in error prosecute its writ of error with effect; and if judgment be affirmed, or the writ of error be discontinued or non-prossed, to pay the cost adjudged accruing upon such judgment and all other damages and costs that may be awarded upon such writ of error.

PULLMAN PALACE CAR CO.
By its attorney, M. E. OLMSTED.
A. C. STAMM.

Taken and acknowledged this 23rd day of May, A. D. 1883.

WILLIAM PEARSON,
Prothonotary.

42 (Endorsement:) No. 36. May term, 1883. Supreme court of Penna., middle district. Pullman Palace Car Co., plaintiff in error, *v.* Commonwealth of Pennsylvania, defendant in error. Dauphin county. *Præcipe*, affidavit, and recognizance for writ of error. Filed May 23rd, 1883. M. E. Olmsted, attorney for plaintiff in error.

(*Assignments of Error.*)

Supreme Court of Pennsylvania, Middle District. May Term, 1883.

PULLMAN'S PALACE CAR COMPANY, Plaintiff in Error (Defendant below),
v.
COMMONWEALTH OF PENNSYLVANIA, Defendant in Error (Plaintiff below.) } 36.

I. The court erred in overruling defendant's first exception, which exception was as follows:

43 "First. The court erred in deciding as follows:

"'We hold, therefore, that both by the terms of the act of June 7, 1879, and from the nature of the business transacted by defendant in this State, the gross receipts reported by it were received for transportation, and are taxable, and properly taxed, in the settlement appealed from in this case.'"

II. The court erred in overruling defendant's second exception, which exception was as follows:

"Second. The court erred in deciding as follows:

"'We hold that the gross receipts of defendant accruing from business done in Pennsylvania are legally taxable here, although they may have gone into its general treasury in Chicago before the tax became due, and that such taxation is not forbidden by the Constitution of the United States.'"

44 III. The court erred in overruling defendant's third exception, which exception was as follows:

"Third. The court erred in deciding as follows:

"'We decide that the act of June 7, 1879, does impose a tax upon the receipts of the Pullman Palace Car Company, and in doing so does not violate clause four, section eight, of article one of the Constitution of the United States.'"

IV. The court erred in overruling defendant's fourth exception, which exception was as follows:

"Fourth. The court erred in directing judgment to be entered in favor of the Commonwealth for $1,464.92."

V. The court erred in overruling defendant's fifth exception, which exception was as follows:

"Fifth. The court erred in not directing judgment to be entered for defendant."

M. E. OLMSTED,
Attorney for Plaintiff in Error.

45 (Endorsement:) No. 36. May term, 1883. Pullman's Palace Car Company *v.* Commonwealth of Pennsylvania. Assignments of error. Filed June 2, 1884.

(*Opinion of Supreme Court.*)

PULLMAN PALACE CAR COMPANY
v.
COMMONWEALTH OF PENNSYLVANIA.

Error to the common pleas of Dauphin county.

TRUNKEY, *J.:*

The act of June 7, 1879, sec. 7 (P. L., 112), imposes the same rate of tax upon the gross receipts from business done within this State by foreign corporations as upon corporations created by this Commonwealth. No discrimination is made against the foreign, none of their receipts are liable to the tax, except for business done within this State, and all the receipts of the domestic, for their entire
46 business, wherever it may be done, are liable. There is no attempt in the statute to exclude foreign corporations as carriers of passengers or to charge any corporation for the business of engaging in commerce. This statute differs in some respects from the act of March 29, 1881, in Indiana, which was held to be violative of the Constitution of the United States by the circuit court, district of Indiana.

A State has power to tax the gross receipts of transportation companies incorporated under its laws engaged in the business of transporting passengers and freight out of, into, through, and within the State. State tax on foreign-held bonds, 15 Wall., 300. Upon the authority of that case the court below ruled that the act of 1879 was not in conflict with any provision of the Constitution of the United States. The statute should be held valid by the State courts
47 unless it is palpably unconstitutional, for their decision that the statute is invalid is final. We are not convinced that it is plainly unconstitutional, and therefore affirm the judgment on the opinion of the learned judge of the common pleas.

Judgment affirmed.

(Endorsement:) No. 36. May term, 1883. Pullman Palace Car Company *v.* Commonwealth of Pennsylvania. Error to the C. P. of Dauphin county. Judgment affirmed. Trunkey, J. Filed Oct 6, 1884.

(*Remittitur.*)

MIDDLE DISTRICT OF PENNSYLVANIA, *sct:*

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

Whereas, by virtue of your writ of error from our supreme court of Pennsylvania in and for the middle district, returnable in
48 the said court on the 21 Monday following 1 Monday of January, in the year of our Lord one thousand eight hundred and eighty-four, a record was brought into the same court of a judgment rendered against the Pullman Palace Car Company, plaintiff in error, at the suit of the Commonwealth of Pennsylvania,

defendant in error, and it was so provided in our supreme court that the judgment was affirmed, and the record and proceedings thereon, and all things concerning the same, were (agreeably to the directions of the act of Assembly in such case made and provided) ordered by the said supreme court to be remitted to the court of common pleas for the county of Dauphin aforesaid, as well for execution or otherwise as to justice shall appertain, wherefore we remit you the record of the judgment aforesaid and the pro-
49 ceedings thereupon in order for execution or otherwise as aforesaid.

Witness the Honorable Ulysses Mercer, chief justice of our supreme court, at Harrisburg, the 9th day of October, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal of the Supreme Court of Pennsylvania, Middle District.]

WILLIAM PEARSON,
Prothonotary.

(Endorsement:) No. 36. May term, 1883. Supreme court of Pennsylvania. Pullman Palace Car Company, plaintiff in error, *v.* Commonwealth of Pennsylvania, defendant in error. Remittitur to Dauphin county.

Costs:

Prothonotary (paid by pl'ff in error)	$7
Attorney	3
Writ (p'd by pl'ff in error)	6
Amount	$16 00

50 And now, here, on this day, to wit, December 5th, 1884, the said The Pullman Palace Car Company produced to the supreme court of Pennsylvania here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment aforesaid, so as aforesaid rendered, with all things touching the same, to be transmitted to the Supreme Court of the United States to be held at the city of Washington on the second Monday of October next, which writ of error is hereunto annexed.

In pursuance whereof and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme
51 Court of the United States accordingly.

(*Petition for Allocatur.*)

To the Honorable Joseph P. Bradley, justice of the Supreme Court of the United States:

The petition of Pullman's Palace Car Company respectfully showeth—

That your petitioner is a corporation created by and existing under the laws of the State of Illinois, having its principal office in the city of Chicago, in said State.

That it owns and leases coaches known as parlor and sleeping coaches, which, by agreement with various railroad companies, it permits to be used upon their lines.

That some of the said sleeping and parlor coaches are, and were during the half year ending December 31, 1882, attached to trains of cars running into, out of, or through the State of Pennsylvania, and used for the transportation of passengers of said railroad
52 companies travelling to or from points in other States, the railroad company receiving in each instance the usual fare for the transportation of passengers in said cars, and Pullman's Palace Car Company receiving pay for sleeping berths, &c., in said cars.

That the auditor general of Pennsylvania settled an account against your petitioner for a tax upon its gross receipts claimed to be due to the said State for the period above mentioned.

That your petitioner appealed from the action of the auditor general to the court of common pleas of Dauphin county, to No. 323, April term, 1883, as provided by law, and in its appeal specified the following objections to the claim of the Commonwealth of Pennsylvania:

"Pullman's Palace Car Company is a corporation of the State of Illinois, and at the time when the tax claimed is alleged to
53 have accrued or become due, and also at the time of the settlement of the account by the auditor general, the receipts upon which tax is charged were the personal property of said company at Chicago, Illinois, mingled with its other receipts and personal property, and were not subject to taxation by the State of Pennsylvania.

"The taxation by the State of Pennsylvania of property owned in Illinois by a corporation of Illinois is in violation of a necessary implication of the Constitution of the United States, that each State shall have jurisdiction only over property within its territorial limits.

"If the act of June 7, 1879, imposes a tax upon the receipts of Pullman's Palace Car Company then the said act is in violation of clause four of article one of the Constitution of the United States, and, therefore, is void."

That, overruling these objections, the court of common
54 pleas of Dauphin county, in an opinion filed by Honorable J. W. Simonton, president judge thereof, found in favor of the Commonwealth for the whole sum claimed.

That your petitioner filed exceptions to the finding of the court, among which exceptions are the following:

"Second. The court erred in deciding as follows:

"'We hold that the gross receipts of defendant accruing from business done in Pennsylvania are legally taxable here, although they may have gone into its general treasury in Chicago before the tax

became due, and that such taxation is not forbidden by the Constitution of the United States.'

"Third. The court erred in deciding as follows:

"'We decide that the act of June 8, 1879, does impose a tax
55 upon the receipts of the Pullman Palace Car Company, and in doing so does not violate clause four, section eight, of article one of the Constitution of the United States.'"

That the said exceptions of your petitioner were overruled by the court of common pleas of Dauphin county.

That by writ of error the said cause was, by your petitioner, removed to the supreme court of Pennsylvania to No. 36, May term, 1883, in the middle district of said court.

That in the supreme court of Pennsylvania your petitioner assigned as error the overruling by the court of common pleas of Dauphin county of the exceptions above stated.

That the supreme court of Pennsylvania, upon the 6th day of October, A. D., 1884, affirmed the judgment of the court of common pleas of Dauphin county, Trunkey, J., who delivered the opinion, saying: "The court below ruled that the act of
56 1879 was not in conflict with any provision of the Constitution of the United States. The statute should be held valid by the State courts unless it is palpably unconstitutional, for their decision that the statute is invalid is final. We are not convinced that it is plainly unconstitutional, and therefore affirm the judgment of the opinion of the learned judge of the — common pleas.

That the supreme court of Pennsylvania, in which said cause was heard and decided, is the highest court of record and the court of last resort in the Commonwealth of Pennsylvania.

That the judgment of the said court is final.

That the judgment of the said court, as already shown, involved the decision of a Federal question, and that the said decision is in favor of the State law and against the immunity claimed by your petitioner under the Constitution of the United States.

57 Wherefore your petitioner (herewith presenting a bond with security for approval) prays that a writ of error may be allowed to issue to the said supreme court of Pennsylvania to bring up the record to the Supreme Court of the United States for correction in that which violates the Constitution and laws thereof, and that the citation to the defendant may accompany the same. And it will ever pray, &c.

PULLMAN'S PALACE CAR CO.,
By its attorneys, M. E. OLMSTED,
O. A. LOCHRANE,

Writ of error allowed pursuant to the foregoing petition.
November 12th, 1884.

JOSEPH P. BRADLEY,
Associate Justice of Supreme Court U. S.

(Endorsement:) 36. May term, 1883. Pullman's Palace
58 Car Company *v.* Commonwealth of Pennsylvania. Petition for *allocatur*. Filed in S. C. of Pa., Dec. 5th, 1884.

(*Writ of Error Bond.*)

Supreme Court of the United States.

PULLMAN'S PALACE CAR COMPANY, Plaintiff in Error,
v.
COMMONWEALTH OF PENNSYLVANIA, Defendant in Error. } No. 36.

In error to the supreme court of Pennsylvania, middle district. May term, 1883.

Know all men by these presents that we, Pullman's Palace Car Company, a corporation of the State of Illinois, and George M. Pullman and John Crerar, of the State of Illinois, county of Cook, sureties, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of three thousand dollars ($3,000), lawful money of the United States of America, to be paid to the said
59 Commonwealth of Pennsylvania, or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves and each of us, our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and dated the — day of October, A. D. 1884.

Whereas lately at a court of common pleas in and for the county of Dauphin judgment was entered against Pullman's Palace Car Company at the suit of the Commonwealth of Pennsylvania, of April term, 1883, No. 323, which judgment was afterwards affirmed by the supreme court of the State of Pennsylvania, in a certain plea and suit in said court, of May term, 1883, No. 36, and the said Pullman's Palace Car Company have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of Pennsylvania:

60 Now, the condition of this obligation is such that if the above-named Pullman's Palace Car Company, plaintiff in error, shall prosecute its writ of error with effect and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; otherwise, to remain in full force and virtue.

[Seal of Pullman's Palace Car Company.]

PULLMAN'S PALACE CAR COMPANY,
By GEORGE M. PULLMAN, *President.*
JOHN CRERAR. [SEAL.]
GEORGE M. PULLMAN. [SEAL.]

Attest:
A. S. WEINSHEIMER, *Secretary.*

Endorsement: No. 36. May term, 1883. Pullman's Palace Car Company *v.* Commonwealth of Pennsylvania. Bond. Filed in S. C. of Pa. Dec. 5th, 1884.

61 STATE OF PENNSYLVANIA:

In testimony that the foregoing, contained on pages 1 to 61, inclusive, is a full, true, and correct copy of the record and proceedings of the supreme court of Pennsylvania, the highest court of law and equity in the State of Pennsylvania, in the case lately depending therein, to No. 36, May term, 1883, middle district, wherein the Pullman Palace Car Company was plaintiff in error and the Commonwealth of Pennsylvania was defendant in error, I have hereunto subscribed my name and affixed the seal of the said supreme court at Harrisburg this 5th day of Jan., A. D. 1885.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary.

Endorsed on cover: Pennsylvania supreme court. No. 589. Pullman's Palace Car Company, plaintiff in error, *vs.* The Commonwealth of Pennsylvania. Filed September 12, 1885.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A.D. 1888.

No. 32.—ERROR TO SUPREME COURT OF PENNSYLVANIA.

PULLMAN'S PALACE CAR COMPANY,
Plaintiff in Error,

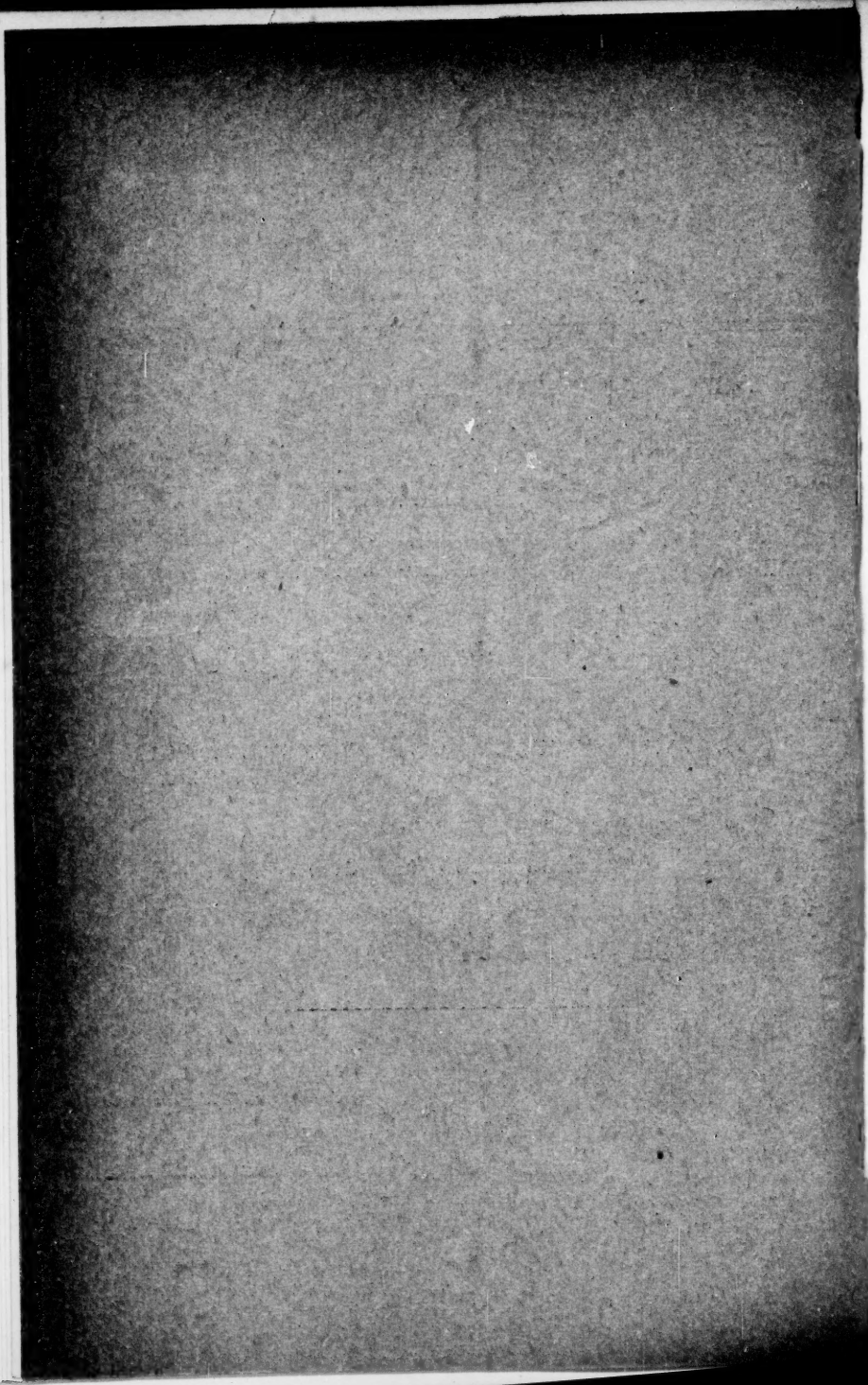
vs.

THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

TAX ON GROSS RECEIPTS.

ARGUMENT FOR PLAINTIFF IN ERROR.

EDWARD S. ISHAM,
WILLIAM BURRY,
Of Counsel for Plaintiff in Error.



IN THE

Supreme Court of the United States.

OCTOBER TERM, A.D. 1888.

No. 32.—ERROR TO SUPREME COURT OF PENNSYLVANIA.

PULLMAN'S PALACE CAR COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

TAX ON GROSS RECEIPTS.

ARGUMENT FOR PLAINTIFF IN ERROR.

The conditions under which the question in this case arises, are as follows:

The plaintiff in error is a corporation of Illinois, with its principal office in Chicago. Its cars are used by it upon railways in the transportation of passengers, and those which are so used under relations to the State of Pennsylvania do most of them run "and carry their passengers from some other State into Pennsylvania, or from the latter into some other State, and many of them run continuously through the State." (Printed Record, page 9, folio 21.)

The State of Pennsylvania asserts the right to tax the gross receipts of the Pullman Company, under the act of the Legislature of June 7, 1879, which is as follows:

"SECTION 7. That every railroad company, canal company, pipe line company, conduit company, steamboat company, slack-water navigation company, transportation company, street passenger railway company, and every other company or limited partnership, now or hereafter

incorporated or organized by or under any law of this Commonwealth, or now or hereafter incorporated or organized by any other State, and doing business in this Commonwealth, and owning, operating or leasing to or from another corporation, company or limited partnership, any railroad, canal, pipe line, slack-water navigation, or street passenger railway, or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freight or passengers, and every telegraph company incorporated under the laws of this or any other State and doing business in this Commonwealth, and every express company, and any palace car and sleeping car company, incorporated or uncorporated, doing business in this Commonwealth, shall pay to the State Treasurer for the use of the Commonwealth a tax of eight tenths of one per centum upon the gross receipts of said company for tolls and transportation, telegraph business or express business; the said tax shall be paid semi-annually upon the last days of July and January in each year, the first payment to be due on the last day of July, Anno Domini one thousand eight hundred and seventy-nine; and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of said company or limited partnership, to transmit to the Auditor-General a statement, under oath, or affirmation, of the amount of gross receipts of said company or limited partnership, derived from all sources during the preceding six months ending on the first days of July and January; and if any such company or limited partnership shall neglect or refuse for a period of thirty days after such tax becomes due, to make said returns or to pay the same, the amount thereof, with an addition of ten per centum thereto shall be collected for the use of the Commonwealth as other taxes are recoverable by law from said companies or limited partnership; *Provided*, that whenever any corporation, company or limited partnership, liable to a tax on gross receipts under the provisions of this section, possesses and exercises the right to mine or purchase and sell coal, the receipts derived purely from the sale of coal so mined or purchased by said company or limited partnership shall not be taxed, but every such company or limited partnership shall keep an account of the said coal, and in the said account shall charge itself with the transportation thereof, at the same rates as charged, or would be charged by the said company or lim-

ited partnership for the transportation of similar freight for other companies or individuals, and the sums so charged for transportation shall be returned by the said company or limited partnership to the Auditor-General, and shall be taxed as a part of the gross receipts of said company or limited partnership. *And provided further*, That in any case where the works of one corporation, company or limited partnership are leased to and operated by another corporation, company or limited partnership, the taxes imposed by this section shall be adjusted between the said corporations, companies or limited partnerships in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the Commonwealth shall first look to the corporation, company or limited partnership operating the works, and upon payment by the said company or limited partnership of a tax upon the entire receipts derived from the operation thereof, the corporation, company or limited partnership from which the said works are leased shall not be held liable under this section for any tax upon the proportion of said receipts received by it as rental for the use of said works."

This statute purports to authorize certain so-called "settlements" to be made by the Auditor-General and State Treasurer, and the amount of the tax ascertained by said settlements to be demanded from the corporation against which the tax is assessed.

"The gross receipts upon which tax is charged in the settlements appealed from, accrued from the business carried on by" the plaintiff in error in the State of Pennsylvania "in the manner above stated, a large proportion thereof having been received from passengers carried into, out of or through the State. These receipts went into the general treasury of the company." (Printed Record, page 9, folio 22.)

The opinion of the Judge of the Court of Common Pleas contains the following statement:

"SECOND.—Defendant contends that these gross receipts are not taxable in this State because it is an Illinois corporation and at the time the tax was claimed and the settlement was made these receipts were the personal property of the company at Chicago, mingled with its other prop-

erty, and that the taxation of property owned in Illinois by a corporation of that State is forbidden by the Constitution of the United States.

"We are not aware that there is any provision in the Constitution of the United States which forbids the taxation of personal property without the jurisdiction of the State if its owner being within the jurisdiction. The State must have jurisdiction of the property or the person, but not necessarily of both. Here the defendant, doing business within the State, is within its jurisdiction and its right and power to tax the property acquired here cannot be defeated by removing the property beyond its borders.

"We hold that the gross receipts of defendant, accruing from business done in Pennsylvania, are legally taxable here, although they may have gone into its general treasury in Chicago, before the tax became due, and that such taxation is not forbidden by the Constitution of the United States.

"THIRD.—Defendant contends, and in doing so, as we understand it, merely makes the second objection, which we think is involved in this, more specific, that 'if the act 'of June 7, 1879, imposes a tax upon receipts of defendant, 'said act is in violation of clause four, section eight, arti-'cle one of the Constitution of the United States, and 'therefore void.'

"This objection cannot be sustained. The point has been settled, for the present, at least, by the case of the *State Tax on Railway Gross Receipts*, 15 Wall., 284." (Record, page 11, folios 28 and 29.)

In the Supreme Court of Pennsylvania, the Court said, "We affirm the judgment on the opinion of the learned judge of the Common Pleas." (Record, page 17, folio 47.)

Upon this record we assign error, as follows:

The Court erred in holding that taxation by the State of Pennsylvania of the gross receipts of the plaintiff in error, a foreign corporation, engaged in the Inter-State trans-

portation of passengers into, out of and through the State, was not in violation of clause three of section eight of article one of the Constitution of the United States.

The gross receipts, which are the subject of taxation in the present case, have principally accrued from the conduct of distinctively Inter-State commerce—from the Inter-State transportation of railway passengers. Before the tax had become due, the receipts had gone into the general treasury of the company, at Chicago.

The ruling of the Court of Pennsylvania was expressly made upon the authority of the case of *State Tax on Railway Gross Receipts*, 15 Wall., 284. We submit, however, that the tax is clearly unlawful, and in contravention of the commerce clause of the Federal Constitution, under the decisions of this Court in the case of *Fargo* v. *Michigan*, 121 U. S., 230; *Ratterman* v. *Western Union*, 127 U. S., 411, and other cases.

The fact that these total gross receipts, chiefly derived from Inter-State transportation, may, perhaps, include also an undistinguished and uncertain, and in any event, comparatively inconsiderable amount derived from transportation within the State, can make no difference under this record, and cannot sustain the judgment. The tax is a unit upon the entire amount of gross receipts, and so is a tax directly upon the receipts derived from the transportation of passengers through the State, from without the State into it, and from within the State out of it. Such was the state of the record in *Pickard* v. *Pullman Co.*, 117 U. S., 343; and the point has been expressly ruled upon in this Court in *Leloup* v. *The Port of Mobile*, 127 U. S., 640.

Whatever the taxing authorities of the State of Pennsylvania may have seen fit to do, the act of the Legislature of that commonwealth expressly declares, in terms, that the *total* gross receipts of every corporation, foreign or domestic, shall be subject to taxation.

EDWARD S. ISHAM,
WILLIAM BURRY,
Of Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

No. 32, OCTOBER TERM, 1888.

Error to the Supreme Court of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

TAXATION OF GROSS RECEIPTS.

BRIEF OF ARGUMENT FOR PLAINTIFF IN ERROR.

The Commonwealth of Pennsylvania seeks to recover from Pullman's Palace Car Company a tax upon gross receipts based upon the seventh section of the Revenue Act of June 7, 1879, (Pamphlet Laws of Pennsylvania for 1879, p. 112,) which requires railroad, express, and telegraph companies, and every other company "in any way engaged in the business of transporting freight and passengers" to pay "a tax of eight-tenths of one per centum upon the gross receipts of said company for tolls and transportation, telegraph business or express business," the amount to be ascertained semi-annually. The case originated in the Court of Common Pleas of Dauphin County, and was there tried without the intervention of a jury, the court finding both the facts and the law by agreement of the parties under the act of April 22, 1874. (See agreement, Record, p. 6, folio 13.)

In cases tried under this act, the facts, as found by the court, are conclusive. *Jamison* vs. *Collins, 83 Pa. St., 359; Lee* vs. *Keys, 88 Pa. St., 175.*

As found by the court, the salient facts in this case are:

"Defendant is an Illinois corporation, with its principal office in Chicago. . . . During all the periods for which tax is charged in this case, it had, and still has, contracts to furnish, and did, and does, furnish to many railroad companies in this and other States, sleeping and parlor cars to be run upon the roads of said companies upon the following terms: The cars furnished by defendant are attached to, and make part of, the trains upon said railroads, no charge being made by either party against the other. The railroad companies sell the usual tickets or collect the usual fare from passengers, which entitles them to travel on the train, but does not give them the right to be transported in the defendant's cars. For this right an additional sum is paid to the defendant, which entitles the passengers to be transported in the cars of the defendant, and to the use of the sitting and sleeping accommodations with which they are furnished while being so transported. Most of these cars run and carry their passengers from some other State into Pennsylvania, or from the latter into some other State, and many of them run continuously through this State."

. . . "The gross receipts upon which tax is charged in the settlements appealed from accrued from the business carried on by defendant in this State in the manner above stated, a large proportion thereof having been received from passengers carried into, out of, or through the State. These receipts went into the general treasury of the compony." (Record, pp. 8, 9.)

Upon this state of facts the company contended that the attempted taxation was in violation of the commercial clause of the Constitution of the United States, upon which point the Dauphin County Court said:

"This objection cannot be sustained. The point has been settled for the present at least by the case of the *State Tax on Railway Gross Receipts, 15 Wallace, 284.* There was a strong dissenting opinion by Mr. Justice Miller, concurred in by two other judges, in that case; but until it is, if ever, overruled, we are bound by it, and so long as the Court which decided it does not restrict it to the case of a corporation chartered by the State imposing the tax, we shall not undertake to do so." (Record, p. 11, folio 29.)

The Supreme Court of Pennsylvania affirmed the judgment for the same reason, Trunkey, J., who delivered the opinion, inadvertently citing the case of *State Tax on Foreign Held Bonds, 15 Wallace, 300*, instead of the case of *State Tax on Railway Gross Receipts, 15 Wallace, 284*.

During the present year the Court of Common Pleas of Dauphin County, holding the Gross Receipts case in 15 Wallace to have been overruled by recent decisions of this Court, has given judgment against the Commonwealth in claims for similar taxation. *Com.* vs. *Del. & Hudson Canal Co., 21, Weekly Notes of Cases, 406*, and numerous other cases. And its judgment has been affirmed by the Supreme Court of Pennsylvania in *Com.* vs. *Lehigh Valley R. R. Co.* and other cases, decided October 1, 1888, not yet reported.

In *Fargo* vs. *Michigan, 121 U. S., 230*, the facts were precisely the same as in this case. The corporation whose receipts were there sought to be taxed was a foreign corporation doing business in Michigan, precisely as Pullman's Palace Car Company is a foreign corporation doing business in Pennsylvania. The taxation of its receipts was distinctly held to be a regulation of inter-State commerce.

In *Philadelphia & Southern Mail Steamship Co.* vs. *Commonwealth of Pennsylvania, 122 U. S., 326*, tax was claimed from the Steamship Company, under the Pennsylvania act of 1879, precisely the same act, and the same section, as that under which the taxes are claimed in this suit. The 15 Wallace case was relied upon by the Attorney General of Pennsylvania in support of the tax. But this Court, Mr. Justice Bradley delivering the opinion, pointed out an important distinction between the act of 1866, which was involved in the 15 Wallace case, and the act of 1879, in that, whereas the former applied to all the receipts of the corporations affected, in the latter the taxation is expressly confined to their receipts from transportation, and not only declared the seventh section of the act of 1879 to be unconstitutional, but also went further and declared the reasoning of the 15 Wallace case to be untenable.

Again, in *Leloup* vs. *Port of Mobile, 127 U. S., 640*, the subject is reviewed by Mr. Justice Bradley, and it is declared to be the deliberate conclusion of this Court "that no State has the right to lay a tax on inter-State commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress."

To a like effect is *Ratterman* vs. *Western Union Telegraph Company, 127 U. S., 411.*

In view of these decisions directly upon the subject, and one of them involving the same statute under which the taxes are here claimed, argument is unnecessary to show that the judgment of the Supreme Court of Pennsylvania must be reversed.

M. E. OLMSTED,
Of Counsel for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

No. ~~31~~ 32

Pullman's Palace Car Company,

Plaintiff in Error.

vs.

The Commonwealth of Pennsylvania,

Defendant in Error.

ERROR TO SUPREME COURT OF PENNSYLVANIA.

TAX ON GROSS RECEIPTS.

DEFENDANT'S BRIEF.

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